



PRICE DANIEL  
ATTORNEY GENERAL

# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

November 20, 1951

Hon. Joe L. Cox  
County Attorney  
Hale County  
Plainview, Texas

Opinion No. V-1349

Re: Authority of the commissioners' court to prorate special road tax proceeds among the commissioners' precincts.

Dear Sir:

Your request for an opinion reads in part as follows:

"I have been requested by the Commissioners Court of Hale County to request an opinion of the Attorney General to the following question:

"In the 1951 tax levy for Hale County there was a levy of \$0.15 on each \$100 valuation for a special road tax under Chapter 4, Title 116 of Vernon's Annotated Civil Statutes. There is no question as to the legality of the special road tax. The Court also levied \$0.03 on each \$100 valuation for the general road and bridge fund. Under the budget it was provided that the taxes collected under the special road tax would be paid into the road and bridge fund for each of the four Commissioners Precincts in proportion to the amount of taxes collected within each Commissioners Precinct.

"By resolution of the County Commissioners Court at their meeting held the 8th of October, 1951, it was provided that the taxes collected under the \$0.15 per \$100 valuation for the special road tax should be divided equally among the four Commissioners Precincts without regard to the amounts collected in each precinct. The budget was adopted providing division according to precincts.

**"QUESTION:** Should the taxes collected under the said levy for the special road tax be expended in each Commissioners Precinct in proportion to the amount of taxes collected in each precinct, or may the same be divided into four equal parts without regard to the amounts collected in each precinct?"

Article 6790, V.C.S., codified in Chapter 4, Title 116 of the Revised Civil Statutes of 1925, provides:

"The commissioners court shall order an election upon presentation to it at any regular session of a petition signed by two hundred qualified voters and property tax payers of the county, or a petition of fifty persons so qualified in any political subdivision or defined district of the county, requesting said court to order an election to determine whether said court shall levy upon the property within said territory a road tax not to exceed fifteen cents on the one hundred dollars worth of property, under the provisions of the amendment of 1889 to the Constitution of the State of Texas, adopted in 1890. Said court may act on such petition without notice, and may make an order for such election, fixing the amount to be levied, not to exceed fifteen cents on the one hundred dollars, the election to take place at any time thereafter, not less than twenty nor more than ninety days from the date of making the order therefor. Upon a petition signed by a majority of the qualified tax paying voters of any portion of any county or of any political subdivision of any county, to said court requesting that such portion of said county or political subdivision shall be created as a defined district, the said court shall declare such territory a defined district and spread the order for same upon the minutes of said court; provided the petition aforesaid shall define by metes and bounds the territory desired to be so incorporated in such defined district."

In construing this provision it was held in Attorney General Opinion 0-2094 (1940):

"We are of the opinion that the tax money levied and collected for the general purpose of building and maintaining the public roads in said county under the provisions of Section 9, Article 8 of the Constitution and Article 6790, may be expended by the county commissioners' court for the purpose of building and maintaining the public roads in said county as said court may in its discretion determine."

You have stated that the most recent order of the Commissioners' Court of Hale County apportions the funds from the special road tax equally among the four commissioners' precincts of the county. Whether this order is a proper one turns upon the question of whether the division of the funds in this manner was made arbitrarily without regard to the condition of the roads of the county or whether, on the other hand, the court in the exercise of its discretion had determined that the condition of the roads justified such a division.

In Stovall v. Shivers, 129 Tex. 256, 103 S.W. 2d 363 (1937), the court said that the provisions of Article 2351, V.C.S., giving the commissioners' court the power, among other things, to exercise general control over all roads, highways, ferries, and bridges in the county contemplated that all roads and bridges of the county should be maintained, repaired, and improved when necessary, as the conditions might require, regardless of the precinct in which the roads were located. The court further said that allegations setting out that the commissioners' court had established a fixed policy of mechanically dividing the road and bridge fund into four equal parts and allotting it to the four precincts of the county without regard to the condition and needs of the roads excluded the idea of the exercise of any discretion based upon a consideration of necessity and conditions of the roads and bridges. However, under the later case of Garland v. Sanders, 114 S.W.2d 302 (Tex. Civ. App. 1938, error dismissed), it is clear that an equal division among the precincts is not an arbitrary abuse of discretion if such a division is in fact based on a consideration of the condition of the roads in the various precincts.

We think the conclusion to be drawn from these cases is that if the commissioners' court in the exercise of its discretion determines that the condition of the roads of the county as a whole justifies a division among the various precincts in equal amounts, the division is a proper one. The necessities of the road system of the county involve fact questions to be determined by the commissioners' court, and, of course, this office would have no power to determine whether the court had abused its discretion in any particular case. Since you have not indicated whether the Commissioners' Court of Hale County based its order on a consideration of these conditions, we are unable to express an opinion as to the propriety of the order.

SUMMARY

Taxes collected under a levy of a special road tax pursuant to Article 6790, V.C.S. may be expended for the construction and maintenance of roads in the county as the commissioners' court may determine in the exercise of its sound discretion, based on a consideration of the condition and necessity of the roads of the county. Att'y Gen. Op. 0-2094 (1940).

APPROVED:

J. C. Davis, Jr.  
County Affairs Division

Everett Hutchinson  
Executive Assistant

Charles D. Mathews  
First Assistant

JR:wh

Yours very truly,

PRICE DANIEL  
Attorney General

By *John Reeves*  
John Reeves  
Assistant